Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1996

Colonel DONALD I. REHMAN (Ret.),

Petitioner,

vs.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOR THE FIFTH DISTRICT, et al.,
and
ECC INTERNATIONAL CORP., et al.,

Respondents.

On Petition For Writ Of Certiorari
Or Alternatively
On Petition For Writ Of Prohibition
To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI
or alternatively
PETITION FOR WRIT OF PROHIBITION

COLONEL DONALD I. REHMAN (Ret.)
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Petitioner Pro Se

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37 pp

QUESTIONS PRESENTED

1. Does the imposition of Appellate Attorney's Fees by Judges in a State Appellate Court, upon a litigant, constitute the type of deprivation of "property" within the meaning and intent of Amendments 5 and 14 of the United States Constitution, and Article I of the Florida State Constitution, such that due process of law is required in the imposition of those Appellate Attorney's Fees.

2. Does the imposition of Appellate Attorney's Fees by the Judges of a State Appellate Court:

- without any written findings of fact,
- without any written findings of law,
- without citing any entitlement authority,
- without any "entitlement" hearing, and
- which is contrary to its own and higher controlling precedent case law,

constitute a "deprivation of property" without due process of law and denial of equal protection under the law, contrary to the mandates of the United States Constitution and/or the Florida State Constitution.

3. Whether the District Court of Appeal of the State of Florida for the Fifth District unconstitutionally "entrapped" and financially penalized a pro se litigant by:

- Accepting and filing his Notice of Appeal, then

QUESTIONS PRESENTED – Continued

- Accepting and filing his Appellant and Reply Briefs on the Merits, then
- Denying Appellees Motion to Strike the pro se's Reply Brief, then
- Determining that the pro se's appeal was worthy of oral argument and scheduling it, then
- Granted its leave for the pro se Appellant to utilize a Court Reporter at oral argument, then
- Interacted extensively with the pro se at oral argument by asking him to elaborate upon a number of legal points, and he competently did so, then
- The Court severely reprimanded Appellees' Counsel for trying to say the pro se's case was frivolous, thus causing Appellees' Counsel to sit down after about only five (5) minutes of his allowed twenty (20) minutes oral argument, then
- The Court said nothing whatsoever at the oral argument to the pro se to indicate that Appellate Attorney's Fees were ever being seriously considered, then

Fifteen (15) days after oral argument was concluded, the Appellate Court granted Appellate Attorney's Fees to Appellees' Counsel (who had been severely reprimanded at oral argument), in an order that is:

- without any written findings of fact,
- without any written findings of law,

QUESTIONS PRESENTED – Continued

- without citing any entitlement authority,
- without any "entitlement" hearing, and
- which is contrary to its own and higher controlling precedent case law,
- All the foregoing events, permitting the Defendants' Attorney to amass $5,725.81 in Appellate Attorney's Fees that he now seeks to have the trial Court order the pro se to pay to him under authority of the Appellate Court's Attorney's Fees Order.

4. Does the Supreme Court in each State of the United States, and especially the Supreme Court of Florida, have an inherent mandated judicial responsibility to ensure that the judges in the Lower Tribunals to those Courts do not inadvertently or intentionally deprive law abiding United States Citizens of due process of law and equal treatment under the law in the invoking of Appellate Attorney's Fees; and can the Supreme Court of a State refuse to review on appeal the imposition of Appellate Attorneys which occurred at the next lower tribunal, by asserting supposedly a lack of subject matter jurisdiction, thereby leaving all such review to the burden of the United States Supreme Court.

5. Was the Supreme Court of Florida's refusal to review on appeal:

- on the grounds that supposedly it lacked

subject matter jurisdiction over the imposition of Appellate Attorney's Fees that occurred to a United States Citizen at the District Court of Appeal of the State of

QUESTIONS PRESENTED – Continued

Florida for the Fifth District, an unconstitutional deprivation of due process and an abandonment of supervisory judicial responsibility over lower tribunal actions.

6. When a United States Citizen timely files at a State Supreme Court an appeal/petition which respectfully asserts that the Lower Tribunal (State District Court of Appeal) and the Trial Court refuses to obey that State Supreme Court's controlling precedent case law, (possibly occurring because the litigant is pro se), may the State Supreme Court dismiss such appeal/petition on the grounds that supposedly it does not have subject matter jurisdiction, thereby leaving it to the burden of the United States Supreme Court to enforce upon the lower tribunals of the State Supreme Court the case law of that State Supreme Court; and,

- is it not the mandated judicial responsibility of every State Supreme Court in the United States to itself ensure that its controlling precedent case law is obeyed by its own Lower Tribunals rather than abandoning that "enforcement" responsibility to the burden of the United States Supreme Court.

7. Is it an unconstitutional practice and a denial of "due process" for Florida State Appellate Courts to be able to use only three (3) words in their civil case orders, namely: **"PER CURIAM AFFIRMED"**, and say absolutely nothing else, those orders then having as a consequence the complete elimination of all right of appeal to the Supreme Court of Florida on any subject matter whatsoever, because that is how that Supreme Court of Florida views

QUESTIONS PRESENTED – Continued

all such Lower Tribunal Orders; and does such practice unnecessarily burden the Supreme Court of the United States with certiorari cases.

Is it unconstitutional to give Florida State Appellate Court Judges the power to eliminate a Citizen's right of appeal, by empowering them to make **"PER CURIAM AFFIRMED"** civil case orders and/or for the Florida Supreme Court to deny review on all cases containing such orders.

8. When a Florida State Appellate Court imposes Appellate Attorney's Fees upon a litigant, does that litigant have, under the United States Constitution, by due process of law, a "right of appeal" thereon to the United States Supreme Court, or is any such appeal only "discretionary" at this Court because there is no constitutional right of appeal on Appellate Attorney's Fees/fines imposed by any Appellate Court of Florida upon United States Citizens.

LIST OF PARTIES

Judge James C. Dauksch, Jr.,
*Judge Winifred J. Sharp,
Judge Emerson R. Thompson, Jr.,
of the District Court of Appeal Of the State of Florida for the Fifth District, and

ECC International Corp.,
A Defense Contractor having an Orlando, FL Facility

EVELYN J. ANDREWS,
DANIEL CARRILLO, Jr.,
GEORGE L. FRYE Jr.,
AJIT W. HIRANI,
GEORGE W. MURPHY,
ANTHONY C. POLK, and
JERRY D. ROBBINS.

**** Judge Winifred J. Sharp is listed as a party because she was on the Panel of Judges whose Appellate Attorney's Fees Order is being appealed; however, she twice voted against imposing Appellate Attorney's Fees upon Rehman, but the votes by Judges Dauksch and Thompson constituted a "majority" vote for imposition of Appellate Attorney's Fees.***

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Petitioner pro se, Colonel Donald I. Rehman (Ret.) [hereinafter: "Rehman"], respectfully petitions for a writ of certiorari to review the final judgment of the District Court of Appeal Of the State of Florida for the Fifth District, which unjustly invokes Appellate Attorney's Fees upon Rehman:

- without any written findings of fact,
- without any written findings of law,
- without citing any entitlement authority,
- without any "entitlement" hearing, and
- which is contrary to its own and higher controlling precedent case law.

OPINIONS BELOW

The decision of the District Court of Appeal Of the State of Florida for the Fifth District (5DCA), to invoke Appellate Attorney's Fees upon Rehman, occurred on April 17, 1996, by the order at **Appendix 'A'** hereto. Rehman timely filed at 5DCA a *"Motion for Rehearing/ Reconsideration of Attorney's Fees Order"* on April 25, 1996; which was denied, by the 5DCA order at **Appendix 'B'** hereto, without opinion, on May 1, 1996. On May 7, 1996 Rehman filed an extensive *NOTICE OF APPEAL* at 5DCA on the Appellate Attorney's Fees matter, which contained extensive material attached to it as to why the 5DCA imposed Appellate Attorney's Fees was unjust. The

Supreme Court of Florida on May 20, 1996, by the order at **Appendix 'C'** hereto, dismissed for lack of subject matter jurisdiction Rehman's appeal, subject to reinstatement upon motion.

On May 29, 1996 Rehman timely filed at the Supreme Court of Florida a "MOTION FOR REINSTATEMENT OF DISMISSED APPEAL". On August 20, 1996, the Supreme Court of Florida denied that MOTION by the order at **Appendix 'D'** hereto. There is pending before this Supreme Court of the United States an APPLICATION FOR STAY, No. **A-167.**

JURISDICTION

The Supreme Court of Florida, having entered its final judgment on August 20, 1996, and there being no Court other than the Supreme Court of the United States to which Rehman can appeal, the jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 5:

[N]o person shall . . . , nor be deprived of life, liberty, or property, without due process of law; . . . .

United States Constitution, Amendment 14:

[N]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Florida Constitution, Article I Declaration of Rights:

Section 9. Due Process. – [N]o person shall be deprived of life, liberty or property without due process of law,. . . .

Florida Constitution, Article I Declaration of Rights:

Section 21. Access to courts. – [T]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

STATEMENT OF THE CASE

In order to properly present to this Court what happened at 5DCA as regards Appellate Attorney's Fees, which is the sole basis of this PETITION, it is necessary to recite briefly the events that started in a Florida private sector workplace, then in a Federal Court lawsuit, then in a Florida Trial Court, and finally at a State of Florida District Court of Appeal.

In 1989, Rehman, whose Biographical Sketch is contained at **Appendix 'E'** hereto, became an employee of ECC International Corp. (hereinafter "ECC"), a Defense Contractor having its main facility in Orlando, Florida. Those individually named RESPONDENTS in this Petition who are not judges, are present and former employees of that Employer.

Shortly after commencing his ECC employment, Rehman detected defense contract fraud in the ECC workplace. The adverse events that then occurred to Rehman, are

summarized in the one page flowchart contained at **Appendix 'F'** hereto. Rehman, after being fired by ECC in 1990, for engaging in whistleblower "protected activity" under 31 U.S.C. § 3730(h), and for repeatedly refusing to participate in his employer's defense contract fraud, filed a lawsuit for wrongful termination of employment in Federal Court, upon which ECC repeatedly sought summary judgment. ECC appealed the Federal Court's denial of summary judgment, to the Eleventh Federal Circuit Court of Appeals. The United States Government (Department of Justice) entered the case there as Amicus Curiae in support of Rehman's position, and the ECC appeal was subsequently dismissed by the Federal Appellate Court. During more than six (6) years of Federal Court litigation on Rehman's lawsuit, the ECC Attorneys who will respond to this Petition, filed ten (10) equivalent Motions for Summary Judgment.[1] Their last Motion for Summary Judgment resulted in the Federal Magistrate Judge's Report and Recommendation contained at **Appendix 'G'** hereto, the Presiding Federal Judge's Order adopting it contained at **Appendix 'H'** hereto, and the Federal trial remains set for January 1997 per the Order contained at **Appendix 'I'** hereto.

During discovery in the Federal lawsuit, ECC refused to furnish names and addresses of certain former employees, but on a Motion to Compel filed by Rehman, the Federal Court so ordered. Just before furnishing the Court ordered names and addresses to Rehman, the ECC Attorneys wrote and sent letters to the 108 persons, portraying Rehman in such a vile manner so as to create

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[1] Some were disguised as Motions in Limine.

revulsion towards him and to make vile assertions relating to his reputation, principles, and character. Additionally, Attorneys for RESPONDENT ECC here, knowingly sanctioned the creation and delivery of a false and defamatory document to the United States Government, intended to intentionally adversely portray Rehman as having supposedly been fired from ECC for misconduct, when no such event had ever occurred; for the purpose of discrediting and defaming Rehman. The defamation issues are before this Court in Rehman's PETITION FOR WRIT OF CERTIORARI, Supreme Court of the United States **Case No. 96-197.**

Rehman attempted to bring in Federal Court, a supplemental jurisdiction State claim action against ECC, for wrongful termination of employment, under the State Whistleblower's Act and the Common Law of Florida. However, the Federal Court declined to exercise jurisdiction. Ultimately, Rehman timely filed a Whistleblower lawsuit in State Court. The presiding Judge there denied ECC's Motion to Dismiss, and instead stayed the case until completion of all Federal Court litigation involving ECC, on Rehman's 31 U.S.C. § 3730(h) claim, was concluded. A copy of that State Trial Court Order is at **Appendix 'J'** hereto.

Thereafter, a State Circuit Court Judge, who had been arrested for a criminal offense and was pending trial in that matter, was taken out of the State Circuit's Domestic Court, transferred to the Civil Division and assigned to Rehman's Whistleblower Case. That Judge was convicted in a public trial by jury, see document at **Appendix 'K'** hereto, and almost immediately thereafter all Rehman's litigation in State Court began to rapidly deteriorate

(retaliation by the Judge, against Rehman who was pro se, for the Judge's criminal conviction by jury of citizens like Rehman) whereby the convicted judge disregarded all that had gone before and Rehman's Defamation Case went from "scheduled for trial" to "thrown out of Court", see Rehman's Petition **Case No. 96-197**; and his Whistleblower case before that same Judge went from "stayed" status as reflected in the Trial Court's decisions at **Appendix 'J'** hereto, to a "thrown out of Court" status, as reflected in the Successor Judge's Trial Court Order at **Appendix 'L'** hereto. In so doing, the Trial Court Successor Judge, caused Rehman to be denied due-process, caused him not to be given equal treatment under the law, and deprived him of beneficial controlling precedent case law. On September 3, 1996, in a nonpartisan election, the Electorate of the County in which the Trial Court Successor Judge serves, voted overwhelmingly (60.17%) for the Judge's opponent, thereby in effect removing the Trial Court Successor Judge from judicial office commencing 1 January 1997.

Upon appeal of the matter to the District Court of Appeal of the State of Florida for the Fifth District (5DCA), although Rehman timely raised the constitutional due process, equal treatment under the law, controlling precedent case law, and disqualification of the Judge issues, all were disregarded completely in a simple "per curiam affirmed" order from that Appellate Court. A copy of that Order is at **Appendix 'M'** hereto. Rehman will, in a separate PETITION FOR WRIT OF CERTIORARI, in which no judges are the Respondents, Rehman will present those basic issues regarding his State Whistleblower

case. This instant PETITION deals only with the Appellate Attorney's Fees issue that occurred at, and was instituted by the 5DCA.

PRIOR PROCEEDINGS IN THIS CASE

Rehman noted that The Florida Supreme Court itself, in ***THE FLORIDA STAR v. B.J.F.***, 530 So.2d 286 (Fla. 1988) . stated:

> *"To seek review of a state court judgment in the United States Supreme Court, a litigant first must exhaust all avenues of review available in the courts of the state. The fact that review in the highest court is discretionary is irrelevant; the litigant still must seek such review in order to proceed to the United States Supreme Court."*
>
> *"It is therefore essential to the preservation of a litigant's right to United States Supreme Court review that he or she know with certainty the avenues of appellate review required by the courts of the state."*
>
> *"A party who files only in the United States Supreme Court, however, would risk the objection that he or she has not exhausted state court remedies."*
>
> *Id.* at 289.

Rehman had absolutely no way of knowing whether any of the distinguishing characteristics of his Whistleblower case would cause The Florida Supreme Court to determine that it indeed had jurisdiction. Thus the only choice he had, in view of the Florida Supreme Court caution to litigants in *THE FLORIDA STAR v. B.J.F.* quoted above, was for Rehman to file his Whistleblower case appeal

first at The Florida Supreme Court. That Court refused to review Rehman's State Whistleblower case and dismissed it claiming no subject matter jurisdiction existed; yet in that appeal Rehman was asking the Supreme Court of Florida to cause its own controlling precedent case law to be reviewed, and to examine the deprivation to Rehman's Federal and State Constitutional rights that were inflicted upon him at the Lower Tribunals. The 5DCA ORDER at **Appendix 'A'** hereto, invoking Appellate Attorney's Fees against Rehman, is unjust on an entitlement basis because:

a. It establishes a precedent whereby law abiding pro se litigants who go respectfully and in good faith to 5DCA on appeal, seeking a determination from that Court, and paying a $250 filing fee for such determination, will subsequently be penalized by being in essence "fined" through imposition of Appellate Attorney's Fees imposed by 5DCA under rather bizarre and lack of due process circumstances, as described below.

b. 5DCA used what gives the appearance of an "entrapment" modus operandi upon Rehman by:

- Accepting and filing his Notice of Appeal, then
- Accepting and filing his Appellant and Reply Briefs on the Merits, then
- Denying Appellees' Motion to Strike the pro se's Reply Brief, then
- Determining that Rehman's pro se's appeal was worthy of oral argument and scheduling it, then

- Granted its leave for the pro se Appellant to utilize a Court Reporter at oral argument, then
- Interacted extensively with Rehman at oral argument by asking him to elaborate upon a number of legal points, and he competently did so, then
- The Court severely reprimanded Appellees' Counsel for trying to say Rehman's case was frivolous, thus causing Appellees' Counsel to sit down after about only five (5) minutes of his allowed twenty (20) minutes oral argument, then
- The Court said nothing whatsoever at the oral argument to the pro se to indicate that Appellate Attorney's Fees were ever being seriously considered, then
- Fifteen (15) days after oral argument was concluded, the Appellate Court granted Appellate Attorney's Fees to Appellees' Counsel, (who had been severely reprimanded at oral argument), in an order that is:
  - without any written findings of fact,
  - without any written findings of law,
  - without citing any entitlement authority,
  - without any "entitlement" hearing, and
  - which is contrary to its own and higher controlling precedent case law,
- All the foregoing events, permitting the Defendants' Attorney to amass **$5,725.81** in Appellate Attorney's Fees that he now seeks

> to have the trial Court order the pro se to pay to him under authority of the Appellate Court's Attorney's Fees Order.

Based upon all the 5DCA prior actions, as enumerated above, it would appear that Rehman's appeal to 5DCA could not have later been treated as being supposedly frivolous. It is interesting to note that the 5DCA did not declare Rehman's appeal to be frivolous in its ORDER at **Appendix 'A'** hereto assessing appellate attorney's fees, it merely in effect ordered Rehman to be fined without explanation, justification, or the citation of any authority whatsoever.

c. The 5DCA Appellate Attorney's Fees Order is unconstitutional because it imposes upon Rehman a forfeiture (taking) of his property (money) solely because he asked 5DCA to review Lower Tribunal actions in his appeal; which that Court then considered through briefs and oral argument. Rehman's whistleblower case appeal will subsequently be before this United States Supreme Court as a Petition for Writ of Certiorari, now being prepared.

d. There has been no written declaration by 5DCA that Rehman's appeal was frivolous and intolerable; a requirement that the Supreme Court of Florida has imposed upon every other Florida State Court which invokes Florida Statutes Section 57.105 penalty. See *WHITTEN v. PROGRESSIVE CASUALTY INSURANCE CO.*, Fla. 410 So.2d 501 (Fla. Sup. Ct., Feb 18, 1982.)

[A] frivolous appeal is not merely one that is likely to be unsuccessful. It is one that is so readily recognizable as devoid of merit on the face of the record that

there is little, if any, prospect that it can ever succeed. It must be one so clearly untenable, or the insufficiency of which is so manifest on a bare inspection of the record and assignments of error, that its character may be determined without argument or research. An appeal is not frivolous where a substantial justiciable question can be spelled out of it, or from any part of it, even though such question is unlikely to be decided other than as the lower court decided it, i.e., against appellant or plaintiff in error. (*Id.* at 505).

Even if the 5DCA case law quoted immediately below did not exist, the 5DCA by the foregoing command of the Supreme Court of Florida in ***WHITTEN v. PROGRESSIVE CASUALTY INSURANCE CO.***, would be prohibited from invoking Appellate Attorney's Fees against Rehman for supposedly frivolous appeal under Florida Statute 57.105, after allowing briefs on the merits and oral argument thereon. Yet, Rehman was denied equal protection under the law and a denial of due process, when 5DCA refused to abide by the foregoing command of the Supreme Court of Florida.

[T]he statute provides that a party is entitled to an award of attorney's fees only when the court determines that there was a complete absence of a justiciable issue raised by the losing party. Without such a finding, an order assessing attorney's fees is technically deficient and must be reversed. Allen v. Estate of Dutton, 394 So.2d 132, 135 ***(Fla. 5th DCA 1980).*** *Id.* at 506

The Supreme Court of the United States is respectfully requested to note from the foregoing citation of 5DCA controlling precedent case law that even the 5DCA itself

commanded that orders invoking attorneys fees under Florida Statute 57.105 must have the specified language contained in them or they will be reversed as legally insufficient. Yet, 5DCA refused to honor even its own case law when it invoked Appellate Attorney's Fees against Rehman in its **Appendix 'A'** Order hereto. Even when Rehman brought that to 5DCA's attention in his MOTION FOR REHEARING on the Appellate Attorney's Fees issue, denied by 5DCA by the Order at **Appendix 'B'** hereto, 5DCA ignored him. Thus, Rehman was denied equal protection under the law and a denial of due process, when 5DCA refused to abide by the foregoing command of its own Court; thereby giving rise to the appearance that because a litigant is pro se, controlling precedent case law will not be applied; thereby abridging the fundamental rights of a Citizen to equal treatment under the law and to due process.

e. The invoking of appellate attorney's fees at 5DCA, while not citing, but perhaps using, Florida Statutes Section 57.105, given the record of good faith Pro Se Petitioner actions that were established in the case, would make such an application of that Statute, to Rehman's 5DCA appeal, unconstitutional and abusive. The assessment of appellate attorney's fees upon a pro se, by that Court, without findings, declaration of entitlement, nor any other explanation, is an unconstitutional deprivation of property without due process of law. Such an occurrence raises the unintended appearance of some sort of "judicial retaliation" designed to discourage Florida Citizens from communicating with the 5DCA without first hiring an attorney.

What that Honorable 5DCA has in effect done, is to establish a precedent whereby pro se litigants, who like Rehman, respectfully seek good faith appeal at 5DCA, could now unexplainably suffer the full wrath of that Court's exercise of its awesome and seemingly limitless judicial power, such that there is a "smite" upon those who have spent their lifetime being law abiding citizen's, and those like Rehman who have served in the Armed Forces of The United States so as to constitutionally guarantee that the American Judicial System can flourish in a Society based upon freedom and justice for all. Rehman's "crime", if there was one, is not that he went to the 5DCA with any frivolous subject matter, because the Court never said that; rather, Rehman's "crime" for which he was ordered to pay Appellate Attorney's Fees, is apparently imposed because he went to that 5DCA in the State of which he is a Citizen and dared to in effect utter the words, "please help me to obtain justice", and he was only a pro se.

REASONS FOR GRANTING THE PETITION

There comes to this Court, through this case, the circumstances whereby a State Court invoked upon a law abiding United States Citizen:

- without any written findings of fact,
- without any written findings of law,
- without citing any authority,
- without any "entitlement" hearing, and

- contrary to its own and higher controlling precedent case law,

what amounts to a "fine", in the form of award of Appellate Attorney's Fees. It also appears that there may not be any United States Supreme Court case law which addresses such a subject. To allow a citizen to be arbitrarily deprived of his property (his money) by means of such circumstances, is in effect a State Court action amounting to a judicial "suspension" of United States Constitutional guarantees to due process and to equal treatment under the law. Additionally, it establishes a dangerous to constitutional democracy technique, whereby the judicial imposition of arbitrary "fines" at the State Court level can operate to discriminate against and penalize that "class" of persons known as "pro se". Thus there is disparate treatment of pro se citizens by the invoking of Appellate Attorney's fees:

- without any written findings of fact,
- without any written findings of law,
- without citing any authority,
- without any "entitlement" hearing, and
- contrary to its own and higher controlling precedent case law.

Because of the nature of this case, it is a situation of, what happens to one can happen to all; that is, if the 5DCA and all its lower tribunals are permitted to violate the constitutional rights to due process and to equal treatment under the law of United States Citizens, even though they be pro se persons, and if the Supreme Court of Florida

will not "lift even one hand" to review such unconstitutional occurrences, then where does the eroding of Constitutional safeguards to all the citizenry stop. If the Courts no longer have the time, nor take the care to:

- make written findings of fact,
- make written findings of law,
- cite governing authority,
- provide "entitlement" and "amount" hearing,
- and do not act contrary to their own controlling precedent case law,

in the matter of appellate attorney's fees, then it might be said that there may no longer be time for "justice" itself. If Rehman's Petition in this case, regarding Appellate Attorney's fees, is not granted, then he genuinely fears that the Courts of Florida may thereafter wreak upon its law abiding United States Citizens, especially those who are pro se, a sort of judicial "reign of financial terror" that runs contrary to every principle of justice, and whose consequences are so abusive as to dishonor all those who over two centuries of our Nation's history have proudly served in the judiciary and those who have fought to preserve it, many forfeiting their lives. The Supreme Court of the United States can rectify the potential harm in this matter at bar, if only it will undertake to set forth by case law what standards must be followed by all State Courts in the imposition of Appellate Attorney's Fees.

Rehman is fully aware that on a number of occasions this Honorable Supreme Court of the United States has made known in its decisions that public policy favors the

encouragement of citizens to utilize Lawyers to represent them in their litigation, and Rehman fully supports such a doctrine. However, when the United States Congress mandated through the enactment of 28 U.S.C. § 1654 the statutory right of Citizens to appear personally (pro se) or by Counsel in all courts of the United States, to manage and conduct their causes, every court in the United States must meticulously enforce such a statutory right. If, when citizens such as Rehman, through circumstances brought about by absolute necessity, avail themselves of the right to appear as pro se, the Courts in which they appear must not seek to judicially nullify 28 U.S.C. § 1654 entitlement, through imposition of unconstitutional trial court and Appellate Attorney's Fees, denial of due process, denial of equal treatment under the law and denial of the benefit of controlling precedent case law. This Honorable Supreme Court of the United States now has before it, by this case, a circumstance that should give it great cause for concern. While this Court favors the use of Attorneys in litigation, surely it will not now turn its back upon that entire class of citizens known as pro se and allow to stand what is unconstitutionally happening to pro se's. The solution to whatever the Lower Tribunal Courts see as any problem with having to deal with pro se litigants, is not properly resolved by now denying constitutional rights to pro se's to discourage them and to try and keep them out of the Courts; nor does financially devastating them in an oppressive fashion lend credibility to the American system of fair and unbiased justice. If the Courts in the states can now make orders which deprive citizens of their property (their money):

- Without making written findings of fact,
- Without making written findings of law,
- Without citing governing authority,
- Without providing "entitlement" hearing, and
- By acting contrary to their own and higher controlling precedent case law,

is it not just a matter of time before Lower Tribunal orders appear which in a likewise unconstitutional fashion deprive citizens of their liberty and their constitutionally guaranteed freedoms as well.

If this United States Supreme Court denies Certiorari to Rehman in this matter, it will signify the beginning of what eventually could become the equivalent of a "judicial reign of financial terror" throughout the United States of America, upon any Citizen who dares to seek justice in any United States Court, without first hiring an Attorney, regardless of what self representation statutory rights have been given to citizens by 28 U.S.C. § 1654. If Citizens exercise such a right, they shall be "financially smited" by some Courts, unless the Supreme Court of the United States puts a stop to such a dangerous to Democracy practice. To Rehman's knowledge, this highest Court in the United States of America has never tolerated "judicial nullification" of a Federal statute without simultaneous judicial declaration of a statute's unconstitutionality; yet, it is clear from the record in this case at bar that Rehman must have been unconstitutionally financially penalized for utilizing 28 U.S.C. § 1654 to appear as pro se at the District Court of Appeal for the State of Florida Fifth District. That seems to be the only logical

explanation for the bizarre result that occurred, as heretofore described. Surely the facts of this case might offend the judicial conscience of the Justices of this Court and hopefully provide a basis for intervention by this Honorable Court. There is within the record of this case a degree of "oppression" that cries out for justice, and a lament over the depths to which our "beloved" system of civil justice may have unintentionally eroded.

CONCLUSION

This petition for a writ of certiorari, or alternatively for Writ of Prohibition, should be granted.

Respectfully submitted by,

COLONEL DONALD I. REHMAN (Ret.)
1390 Windy Ridge Court
Longwood, Florida 32750-4501
(407) 260-0690
Petitioner Pro Se

October 7, 1996

APPENDIX A

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

DONALD I. REHMAN,

Appellant,

v.

ECC INTERNATIONAL CORP., et al.,

Case No. 95-1758

Appellee.

_____/

DATE: April 17, 1996

BY ORDER OF THE COURT:

ORDERED that Appellee's Motion For Attorney's Fees, filed October 26, 1995, is granted and the above-styled cause is hereby remanded to the Circuit Court for Orange County, Florida, pursuant to Fla.R.App.P. 9.400(b) to determine and assess reasonable attorney's fees for this appeal.

I hereby certify that the foregoing is (a true copy of) the original court order.

/s/ Frank J. Habershaw
FRANK J. HABERSHAW, CLERK

BY: _____
Deputy Clerk

(COURT SEAL)

cc: Clerk of the Court, Orange County (CI94-1586)
Allen J. McKenna, Esq.
Theodore R. Baumgardner, Esq.
Donald I. Rehman

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

DONALD I. REHMAN,

Appellant,

v.

ECC INTERNATIONAL CORP., et al.,

Case No. 95-1758

Appellee.

_____/

DATE: May 1, 1996

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR REVIEW OF ATTORNEY'S FEES ORDER & MOTION FOR REHEARING/RECONSIDERATION OF ATTORNEY'S FEES ORDER, filed April 25, 1996, is denied.

I hereby certify that the foregoing is (a true copy of) the original court order.

/s/ Frank J. Habershaw
FRANK J. HABERSHAW, CLERK

BY: _____
Deputy Clerk

(COURT SEAL)

cc: Donald I. Rehman
Allen J. McKenna, Esq.
Theodore R. Baumgardner, Esq.

APPENDIX C

Supreme Court of Florida

MONDAY, MAY 20, 1996

DONALD I. REHMAN Appellant, v. ECC INTERNATIONAL CORP., ET AL., Appellees.	*	CASE NO. 87,969 District Court of Appeal, 5th District – No. 95-1758

It appearing to the Court that the District Court of Appeal, Fifth District, did not declare *invalid* a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal filed May 13, 1996 is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion *filed* within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

A True Copy
TEST:
/s/ Sid J. White
Sid J. White
Clerk
Supreme Court
[SEAL]

bdm
cc: Hon. Frank Habershaw, Clerk
Hon. Fran Carlton, Clerk
Hon. Linda A. Gloeckner, Judge
Mr. Donald I. Rehman
Mr. Theodore R. Baumgardner
Mr. Allen J. McKenna

APPENDIX D

Supreme Court of Florida

TUESDAY, AUGUST 20, 1996

DONALD I. REHMAN Appellant, v. ECC INTERNATIONAL CORP., ET AL., Appellees.	*	CASE NO. 87,969 District Court of Appeal, 5th District – No. 95-1758

Appellant's Motions for Reinstatement filed in the above cause are hereby denied.

Appellees' Motion for Attorneys' Fees are hereby denied. OVERTON, SHAW, GRIMES, HARDING and ANSTEAD, JJ., concur.

A True Copy
TEST:
/s/ Sid J. White
Sid J. White
Clerk
Supreme Court
[SEAL]

TC
cc: Hon. Frank Habershaw, Clerk
Hon. Fran Carlton, Clerk
Hon. Linda A. Gloeckner, Judge
Mr. Donald I. Rehman
Mr. Theodore R. Baumgardner
Mr. Allen J. McKenna

APPENDIX E

BIOGRAPHICAL SKETCH – DONALD I. REHMAN

Don Rehman is a Certified Professional Logistician (C.P.L.) with an MBA degree, a Master of Science degree in Logistics Management, and a Bachelor of Science degree in Military Science. He has over 30 years experience in the field of Logistics Management, and he has attended numerous technical courses related to his logistics career field.

As a teenager, Don Rehman commenced a military career, starting as a Private. Serving for more than 26 years, his military career was devoted almost exclusively to logistics. He received successive promotions reaching the grade of full Colonel, and worked in logistics assignments at operational levels, commodity command, major field command, and the Pentagon. He achieved Logistician certification from the cognizant Pentagon agency, in addition to earning his C.P.L. certification.

Subsequent to his military service, Don Rehman commenced a second career in industry where he worked for numerous years. He has been employed by E-Systems as Manager International Marketing & Logistics, Manager Division Profit Planning, and Manager Review & Analysis Group (Logistics). Subsequent to E-Systems employment, Don attended the University of South Florida (Tampa) on a full time basis to earn his second master's degree, an MBA. Upon graduation he joined Sanders Associates as Integrated Logistics Support (ILS) Program Manager. Later he became Manager of Logistics for Codex Corporation. In 1987 Don Rehman established Rehman Consulting Services Company, specializing in

Logistics Management, and relocated from New England to the Orlando Area. An exceptional position opportunity with a Defense Contractor in May 1989, caused him to accept employment with that Company. He subsequently was assigned as the Staff Assistant (for Logistics) to the Vice President Engineering.

Don Rehman has been married for over 42 years to his wife Marian, whom he met at his first duty station after graduating from Officer Candidate School (OCS) and becoming a second lieutenant. They have two children. Their son Doug is a graduate of the University of South Florida with a B.S. in Criminal Justice, is married, 2 children, and is employed with the Florida Department of Law Enforcement (FDLE). Their daughter Linda is a graduate of the Medical College of Georgia with a B.S. in Dental Hygiene, and is following in her mother's footsteps by having married a second lieutenant, who over the years advanced in grade, and is now a Lieutenant Colonel. She has 2 children and works full time in her medical specialty.

Don's hobbies are electronics, computer, and auto mechanics. He served over a year as Director/President of the Northridge Pointe Homeowners' Association, is now its Director/Secretary, and he recently completed several years of service as a member of the Seminole County Sheriff's Civilian Review Board.

FLOWCHART OF: CIVIL ACTION #: 90-425-CIV-ORL-22

ECC INT'L CORP. ALLEGEDLY HAS ROUTINE DETRIMENTAL PRACTICES

↓

PRIOR LOGISTICS MANAGER RESIGNS IN FRUSTRATION TO PRECLUDE BECOMING INVOLVED IN DEFENSE CONTRACT WRONGDOING

PLAINTIFF HIRED AS LOGISTICS MANAGER; DISCOVERS SERIOUS PROBLEMS AT ECC

↓

PLAINTIFF RAISES ISSUES RELATED TO COMPANY DEFENSE CONTRACT MATTERS WITHIN 1ST 2 WEEKS OF EMPLOYMENT COMMENCEMENT

↓

PLAINTIFF ATTEMPTS TO RESIGN AFTER 5 MONTHS OF ENDURING DISCRIMINATION & HARASSMENT, BUT IS PERSUADED TO STAY BY FRAUDULENT ECC PRETENSES

EXTENT AND NATURE OF PLAINTIFF DUTIES DEFINED AND MUTUALLY AGREED TO (BUT 30+ DAYS LATER FULLY VIOLATED BY ECC)

↓

PLAINTIFF ATTEMPTS TO RELIEVE "INCAPABLE" EMPLOYEE FROM SENSITIVE POSITION ON DEFENSE CONTRACT AND GIVE HIM A JOB MORE IN KEEPING WITH HIS CAPABILITIES (EMPLOYEE LATER COMMITS WRONGDOING)

PLAINTIFF SUDDENLY DEMOTED, HUMILIATED, AND PLACED IN ISOLATION AS RETALIATION FOR EXPOSING AND TRYING TO PREVENT DEFENSE CONTRACT FRAUD

↓

PLAINTIFF PERMITTED TO INTERACT ONLY WITH EMPLOYEE WHOM HE TRIED TO RELIEVE. AFTER DEMOTION, OVER A 3 MONTHS PERIOD, BY DIABOLICAL ECC SCHEME, ALL PLAINTIFF'S WORK MUST BE SUBMITTED TO THAT EMPLOYEE, WHO CONTINUALLY DISAPPROVES IT ALL AND THROWS SOME/ALL IN TRASH

↓

OVER SEVERAL MONTHS, PLAINTIFF SUBMITS MEMORANDUMS TO ECC SUPERIOR DOCUMENTING COMPANY'S ALLEGED CONTRACT FRAUD IN EFFORT TO STOP IT

↓

PLAINTIFF BEGINS TO PREPARE WRITTEN FRAUD COMPLAINT TO U.S. GOVERNMENT AND "QUI TAM" (FALSE CLAIMS ACT) ACTION IN NAME OF U.S. GOVERNMENT

KNOWING THAT PLAINTIFF IS GOING TO "BLOW THE WHISTLE", EXTRAORDINARY PRESSURE PLACED UPON PLAINTIFF TO CONFISCATE ALL HIS FRAUD EVIDENCE AND MAKE HIM RESIGN. PLAINTIFF REFUSES TO RELINQUISH DOCUMENTS/RESIGN AND IS SUMMARILY FIRED UNDER PRETEXT OF UNSATISFACTORY JOB PERFORMANCE

↓

DEFENDANTS SEND WRITTEN MISINFORMATION TO OVER 100 PERSONS THROUGHOUT U.S. IN MALICIOUS AND RETALIATORY EFFORT TO INTENTIONALLY IMPAIR PLAINTIFF'S PERSONAL AND PROFESSIONAL REPUTATION

↓

PLAINTIFF SUFFERED PERSONAL HUMILIATION/MENTAL SUFFERING/LOSS OF ENJOYMENT OF LIFE/DISCRIMINATION/JOB LOSS/DEVASTATION OF CAREER AND IMMENSE FINANCIAL BURDEN/LOSS, ETC.

APPENDIX G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DONALD I. REHMAN,

Plaintiff,

-vs-

ECC INTERNATIONAL CORP.,

Defendant.

Case No. 90-425-Civ-Orl-22

REPORT AND RECOMMENDATION

(Filed Jun. 5, 1996)

TO THE UNITED STATES DISTRICT COURT

Defendant ECC International Corporation's (herein "ECC") motion for summary judgment (Doc. No. 607) has been referred to the undersigned United States Magistrate Judge for preparation of a Report and Recommendation as to appropriate disposition.

A party is entitled to judgment as a matter of law when the party can show that there is no genuine issue as to any material fact. Fed. R. Civ. Pro. 56(c). The substantive law applicable to the case determines which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986). Summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof." *Celotex Corp. v. Catrett*, 477 U.S. 317,

322 (1986). As the Plaintiff bears the burden of proving his claim, the Defendant is not required to negate it, but may support its Rule 56 motion by "showing – that is, pointing out to the district court – that there is an absence of evidence to support the non-moving party's case." *Celotex*, 477 U.S. at 325; *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993). In undertaking this analysis, it is appropriate to construe the *pro se* complaint more liberally than the Court would the complaint of a represented party. *Harris v. Ostrout*, 65 F.3d 912 (11th Cir. 1995).

In its motion, ECC reiterates its earlier arguments pertaining to the two remaining claims in the case, a claim for two weeks of severance pay and a claim pursuant to 31 U.S.C. § 3730(h). *See Report and Recommendation dated March 4, 1993 (Doc. No. 497); and this Court's adoption of same (Doc. No. 532).* Although additional case law has developed since the Court denied ECC's previous motion for summary judgment on the False Claims action, the new case law does not change the facts particular to this case. Because there remain genuine issues of material fact with respect to whether Plaintiff engaged in conduct protected by § 3730(h), whether ECC was aware of such conduct and the significance of the conduct in ECC's decision to terminate Plaintiff, summary judgment is just as inappropriate now as it was three years ago. *See Field v. F & B Manufacturing, Co.*, 1996 WL 238917 (N.D. Ill. May 6, 1996) (summary judgment is inappropriate when a reasonable jury could conclude that claimant had reasonable cause for suspicion and inquiry into company's potentially fraudulent conduct, even if no actual fraud existed.)

With respect to the severance pay claim, as this Court stated previously entitlement to and the amount of severance pay cannot ordinarily be determined summarily.[1] The conflicting testimony and authorities compel denial of summary judgment on this claim.

Therefore, the undersigned respectfully recommends that ECC's motion be **DENIED** and the case remain on the trial calendar.

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Respectfully recommended in Orlando, Florida on June 5, 1996.

/s/ David A. Baker
DAVID A. BAKER
UNITED STATES
MAGISTRATE JUDGE

Copies furnished to:

Donald I. Rehman
Allen J. McKenna
Theodore R. Baumgardner

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[1] Interestingly, in defending against Plaintiff's motion for summary judgment on this claim three years ago, ECC argued that, at the very least, factual issues exist as to Plaintiff's entitlement to be paid beyond the actual period of his employment. The Court agrees.

APPENDIX H

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DONALD I. REHMAN,

Plaintiff

-vs- CASE NO. 90-425-CIV-ORL-22

ECC INTERNATIONAL CORP.,,

Defendant

_____/

ORDER

This cause comes before the Court on Defendant ECC International Corporation's (herein "ECC") motion for summary judgment (Dkt. 607). The United States Magistrate Judge has submitted a report recommending that the Motion be denied. No opposition to the report has been timely filed.

After an independent *de novo* review of the entire record in this matter, the Court agrees entirely with the findings of fact and conclusions of law in the Report and Recommendation (Dkt. 635).

Based on the foregoing, it is ordered as follows

1. The Report and Recommendation filed June 5, 1996 (Dkt. 635), is ADOPTED and CONFIRMED and made part of this Order.

2. The Motion for summary judgment (Dkt. 607) is denied.

DONE AND ORDERED in Chambers, Orlando, Florida, this 27th day of June , 1996.

/s/ Anne C. Conway
ANNE C. CONWAY
United States
District Judge

Copies to: Counsel of Record

APPENDIX I

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DONALD I. REHMAN,

Plaintiff

-vs- CASE NO. 90-425-CIV-ORL-22

ECC INTERNATIONAL CORPORATION,

Defendant

_____/

ORDER

(Filed Jan. 4, 1996)

Plaintiff's **Renewed Motion to Set Cause for Trial (Dkt. 622)**, filed December 19, 1995, is GRANTED. This jury trial is scheduled for the trial term commencing **January 2, 1997.**

DONE AND ORDERED in Chambers in Orlando, Florida, this 4th day of January , 1996.

/s/ Anne C. Conway
ANNE C. CONWAY
United States
District Judge

Copies to: Donald I. Rehman, *pro se*
Counsel of Record

APPENDIX J

IN THE CIRCUIT COURT OF
THE NINTH JUDICIAL
CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

DONALD I. REHMAN,

Plaintiff, Case No. CI 94-1586

vs.

ECC INTERNATIONAL CORP,
et al.,

Defendants.
_____/

ORDER ON DEFENDANTS' MOTION TO DISMISS AND ALTERNATIVE MOTIONS TO STAY/ABATE AND TO STRIKE

THIS CAUSE having come on to be heard on Defendants' Motion to Dismiss and Alternative Motions to Stay/Abate and to Strike, and the Court being fully advised in the premises herein, it is hereby

ORDERED AND ADJUDGED:

The Defendants' Motion to Stay/Abate is hereby GRANTED.

All state court proceedings in this matter, including any decision by this Court on the Defendant's Motion to Dismiss and Motion to Strike, shall be stayed until such time as all federal court trial and appeal proceedings between the parties have been completed.

DONE AND ORDERED in Chambers, Orange County Courthouse, Orlando, Florida, this 9th day of May, 1994.

/s/ W. Rogers Turner
W. Rogers Turner
Circuit Court Judge

Copies to:
Mr. Donald I. Rehman
1390 Windy Ridge Court
Longwood, Florida 32750

Allen J. McKenna, Esq.
Garwood, McKenna & McKenna, P.A.
P.O. Box 60
Orlando, Florida 32802

The Orlando Sentinel
SUNDAY, January 22, 1995

Expelled students are more likely to commit serious crimes, a state study shows, B-3

Local & state

TOM SPITZ/THE ORLANDO SENTINEL

Orange Circuit Judge Linda Gloeckner prepares to wipe her fingers after prints are taken Saturday. She was found guilty of drunken driving.

Judge convicted of drunken driving

By Debbie Salamone

OF THE SENTINEL STAFF

An Orange County judge who rammed her Volvo into the rear of a BMW two years ago was found guilty Saturday of drunken driving.

Circuit Judge Linda Gloeckner was sentenced to serve a year of probation, pay $750 in fines and drive only on business for the next six months.

Her five-day trial in Orlando ended after less than two hours of jury deliberations. Gloeckner, who shook her head after hearing the verdict, declined to comment.

Seminole County prosecutors Eilam Isaak and Jack Kaleita faced an uphill fight after Seminole County Judge Fredric Hitt prohibited them from telling jurors that Gloeckner's blood-alcohol content had been measured at 0.17 percent. Florida's legal limit at the time of Gloeckner's arrest in January 1993 was 0.10 percent.

Defense attorneys Stuart Hyman and Mark NeJame, who had questioned the reliability of the breath test, attacked the credibility of prosecution witnesses throughout the trial. Two alternate jurors — released from duty before jury deliberations — said they would have found the judge not guilty.

Hyman said appeals are likely, and he will ask for a new trial.

"Considering the outcome, it just proves there is a justice system that we have to have faith in. And it proves nobody is above the law," said John

Please see **JUDGE, B-5**

Judge must attend defensive driving school, victims program

JUDGE from B-1

Evans, a victim advocate for Mothers Against Drunk Driving who spoke for the women involved the car accident.

As part of her sentence, Gloeckner, 45, must attend defensive-driving school and a victim awareness program. Hitt withheld a formal ruling of guilt on a careless driving citation. Gloeckner interjected that she had completed a drunken driving course that also is part of her sentence. She said counselors determined she had no alcohol problem.

Gloeckner's car struck the BMW at a traffic light at Wymore and Lee roads. The BMW slammed into a vehicle in front of it. The judge refused to take all but one field sobriety test, saying blindness in one eye would have affected her ability to perform successfully.

Prosecutors, however, showed a video of Gloeckner during her arrest and called some of her answers slurred. They also had testimony from accident victims and a state trooper who said Gloeckner showed signs of intoxication, including smelling of alcohol.

Their key witness, a waitress, produced a restaurant receipt and testified that she served Gloeckner eight 2-ounce straight vodka drinks within two hours at the Maitland restaurant where the judge joined several other women for a birthday party.

But a surprise defense witness — the restaurant owner — testified that the waitress had been known to alter drink and meal tickets to pocket extra money. The receipt brought by the waitress appeared to have some inconsistencies, the defense attorneys argued.

In addition, the lawyers tried to discredit the accident victims, pointing out that a verdict against the judge would help their civil lawsuit against her. They also argued that the women at the party saw Gloeckner drink only two drinks and that she seemed fine upon leaving.

They showed a video of Gloeckner buying food in a convenience store minutes after the accident to prove she walked without staggering or swaying. Several lawyers who saw Gloeckner after the accident testified that she did not appear drunk, and her ophthalmologist testified she had trouble with depth perception that might cause her to stumble.

Gloeckner, who handles civil matters such as contract disputes, already has been reprimanded by the Florida Supreme Court.

APPENDIX L

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: C194-1586

DONALD I. REHMAN,

Plaintiff,

vs.

ECC INTERNATIONAL CORP.,
et. al.,

Defendants.
_____/

ORDER

THIS CAUSE having come onto be heard upon Defendants' Motion for Reconsideration Based Upon Changed and Exigent Circumstances, and Motion to set aside Stay of Proceeding for the sole purpose of considering Defendant's Motion to Dismiss based upon new Florida Supreme Court Case Law and Motion to Dismiss and being otherwise fully advised in the premises, it is therefore

ORDERED and **ADJUDGED:**

1. That Defendant's Motion for Reconsideration Based Upon Changed Exigent Circumstances is hereby Granted.

2. That Defendant's Motion to set aside the Stay of proceedings is hereby Granted.

3. That Defendant's Motion to Dismiss is Granted, with prejudice, on the following grounds:

A. F.S.A. § 448.101 cannot provide jurisdiction retroactively to apply to Plaintiff's claim pursuant to the Florida's Supreme Court decision in *Walsh v. Arrow Air, Inc.*, 645 So.2d 422 (Fla. 1994);

B. F.S.A. § 448.101 applies only to "employer[s]" and therefore is not applicable to the individually named Defendants; and

C. Plaintiff's action is barred by the applicable statute of limitations, F.S.A. § 448.103.

DONE and **ORDERED** in chambers at Orlando, Orange County, Florida, this 28 day of June, 1995.

/s/ Linda Gloeckner
Linda Gloeckner,
Circuit Judge

Copies to: Allen J. McKenna, Esquire
Theodore R. Baumgardner, Esquire
Donald I. Rehman
By /s/ Joyce Brasher
June 28, 1995

APPENDIX M

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT JANUARY TERM 1996

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

DONALD I. REHMAN,

Appellant,

v. CASE NO. 95-1758

ECC INTERNATIONAL CORP., et al.,

Appellees.

_____/

Decision filed April 16, 1996

Appeal from the Circuit Court for Orange County, Linda A. Gloeckner, Judge.

Donald I. Rehman, Longwood, in proper person.

Theodore R. Baumgardner, Orlando, for ECC International Corp., and Allen J. McKenna, of Garwood, McKenna & McKenna, P.A., Orlando, for Appellees.

PER CURIAM.

AFFIRMED.

DAUKSCH, SHARP, W., and THOMPSON, JJ., concur.